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April 29, 2013

The Honorable Laura Swain
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl St.
New York, NY 10007–1312

In re American International Group, Inc., 2008 Securities Litigation,
Master File No. 08-CV-4772 (LTS)

Dear Judge Swain:

On behalf of defendants in the above-captioned action, I write in advance of the May 1, 2013 oral argument on plaintiffs' motion for class certification to bring to the Court's attention three class certification decisions issued after completion of briefing. These decisions further support the exclusion from any class certified of the Series A-2 and A-3 Junior Subordinated Debentures, foreign currency denominated bonds as to which there is no evidence any domestic transactions occurred (the "Foreign Bonds").

As set forth in the Underwriter Defendants' opposition to the motion at pages 16-18, Plaintiffs have failed to establish that any sale of the Foreign Bonds was subject to the United States securities laws. *See Morrison* v. *Nat'l Austl. Bank Ltd.*, 130 S. Ct. 2869, 2884 (2010); *see also In re Royal Bank of Scot. Grp. PLC Sec. Litig.*, 765 F. Supp. 2d 327, 338 (S.D.N.Y. 2011) (dismissing §§ 11 and 12(a)(2) claims related to foreign transactions because, "[u]nder *Morrison*, the Securities Act, like the Exchange Act, does not have extraterritorial reach"). Plaintiffs' response on reply was (1) that the

Morrison "issue has no implications on certification of the class here, and is thus best left for consideration after a determination is made on Defendants' liability" and (2) that "*Defendants* cannot show that all purchases of the [Foreign Bonds] occurred outside of the United States." Pl.s' Reply Br. 58 (emphasis added).

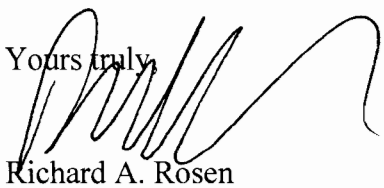
Recent decisions firmly refute plaintiffs' contentions. *In re Sanofi-Aventis Securities Litigation* granted a motion for class certification, but excluded from the proposed class a named plaintiff who had purchased common stock that did not trade domestically and was thus not within the reach of the United States securities laws. --- F.R.D. ----, No. 07 Civ. 10279 (GBD) (FM), 2013 WL 1149672, at *8 (S.D.N.Y. Mar. 20, 2013). Judge Daniels noted that the named plaintiff "ha[d] not presented any other argument or evidence to suggest that it" engaged in "a domestic transaction covered by the Exchange Act." Thus, Judge Daniels both (1) decided the *Morrison* question on a class certification motion and (2) clearly placed on plaintiffs the burden to prove that the transaction was domestic.

In a motion to expand a class post-trial, Judge Scheindlin, in *In re Vivendi Universal, S.A. Securities Litigation* likewise placed the burden of proof on plaintiffs, refusing to expand the definition of a class to include shareholders who received shares as part of a merger agreement where there was "no evidence presented, or even allegations made," that the merger agreement was executed in the United States. 284 F.R.D. 144, 152 (S.D.N.Y. 2012) (noting that "irrevocable liability occurs when (and where) there is a binding contract for the purchase or sale of a security").

In re Smart Technologies, Inc. Shareholder Litigation, like *Sanofi-Aventis*, resolved the viability of plaintiffs' claims under *Morrison* in the context of a class certification motion. --- F.R.D. ----, No. 11 Civ. 7673 (KBF), 2013 WL 139559, at *6 (S.D.N.Y. Jan. 11, 2013). In *Smart Technologies,* Judge Forrest granted a motion for class certification but held that that, "to the extent that putative class members purchased, incurred 'irrevocable liability,' or obtained 'title' to securities . . . anywhere . . . outside the United States[,] they do not have a viable cause of action under the Securities Act, and may not be included in the class certified here." *Id.* (citation omitted). Judge Forrest reaffirmed that "*Morrison*'s prohibition on extraterritoriality applies equally to Securities Act claims and thus . . . non-U.S. purchasers of [the] stock [at issue] *may not be included in the class*." *Id.* at *4 (collecting cases) (emphasis added).

We respectfully submit that for these reasons, and those set forth in our prior papers, no class should be certified as to purchasers of the Foreign Bonds. Copies of the decisions cited herein are attached for the Court's convenience.

Yours truly,



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Enclosure

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